

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

.....X

MICHAEL BELVIN,  
MICHAEL MAYERS,

Civil Action No. 17-CV-06303

Plaintiff(s),

-against-

ELECTCHESTER MANAGEMENT, LLC

Defendants.

.....X

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**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANT'S MOTIONS IN LIMINE TO PRECLUDE TESTIMONY OF  
NON-PARTY WITNESS, EVIDENCE ALLEGED TO BE TIME BARRED,  
AND EVIDENCE ANTICIPATED TO BE BASED ON GOLDEN  
RULE/RETILE THEORY**

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## **PRELIMINARY STATEMENT**

The Defendant has filed four separate motions seeking court rulings on each of the motions. The motions include, among others, the followings: a. a motion seeking to preclude the testimony of a nonparty employee regarding discriminatory acts against such employees: b. a motion seeking to preclude evidence that is allegedly time-barred: c. a motion that seeks a court order to prevent Plaintiffs from presenting any evidence based on the Golden Rule or Reptile Theory, and lastly a motion that seeks an order precluding Plaintiff from introducing any evidence of insurance liability of settlement discussions among the parties. The Plaintiffs will address each point below.

## **ARGUMENT**

### **POINT I**

#### **THE COURT SHOULD NOT PRECLUDE THE TESTIMONIES OF NON-PARTY WITNESSES IDENTIFIED AS DAVID HEWLETT AND JEROME JENKINS**

The Defendant in its moving papers argued that the testimonies of non-party witnesses should be precluded in this matter. The Defendant relied heavily on a set of cases from districts courts. This reliance however is misplaced. The Defendant argument cites to , *EEOC v. Bloomberg L.P.*, 778 F. Supp. 2d 458, 468 (S.D.N.Y. 2011) (“*There is a manifest difference between claims of individual discrimination and claims of a pattern or practice of discrimination.*”); *Rao v. Rodriguez*, 2017 U.S. Dist. LEXIS 58996 (E.D.N.Y. 2017) (*granting defendants’ motion in limine to preclude evidence related to substantive evidence of a non-party discrimination complaint*); *Levitant v. City of New York Human Res. Admin.*, 2011 U.S. Dist. LEXIS 20742 (E.D.N.Y. 2011) (*precluding testimony of non-party witnesses because they did not have direct knowledge relevant to the plaintiff’s discrimination allegations*); *Oliver v. New York State Police*, 2022 U.S. Dist.

*LEXIS 57588 (N.D.N.Y. 2022) (granting motion in limine to exclude evidence related to non-party complaints and personnel documents related to such complaints because they were irrelevant to the remaining triable issues); Sarno v. Douglas Elliman-Gibbons & Ives, Inc., 183 F.3d 155, 160 (2d Cir. 1999) (hearsay statements by witnesses without personal knowledge “did not constitute competent evidence”); Kargo, Inc. v. Pegaso PCS, S.A., No. 05-cv 10528 (CSH)(DFE), 2008 U.S. Dist. LEXIS 81888, at \*36 (S.D.N.Y. Oct. 14, 2008) (evidence deemed inadmissible hearsay because declarant had “no personal knowledge of the events described”).* These cases however are truly clear that a witness may be precluded if his testimony is not based on personal knowledge, or the testimony is not related to the case at bar. The two witnesses that Defendant seeks to preclude were Plaintiffs former co-workers who witnessed the discrimination complaints that Plaintiffs made and in the case of Hewlett he filed his own EEOC complaint and Plaintiffs will testify that he was pressured by Mr. Mundo, Defendant’s attorney, to withdraw his EEOC complaint just as Plaintiff Belvin was. See Belvin deposition page 246.

Additionally, Mayers testified that Hewlett was present when discriminatory comments and acts were committed and that he and Hewlett suffered the same fate including disproportionate assignment of work (Mayers deposition at pages 45,49,51,57, 69 71, 72, 75, 86,177, 288,) retaliation (Mayers deposition page 174) and race-based decisions by the employer (Mayers deposition Page 209). Exhibit A

Mayers also testified that Jerome Jenkins also experienced firsthand the same harassing and discriminatory conduct he experienced, and that Black employees were subjected to retaliatory termination. See Mayers deposition pages 168,170,246,249, and 250.

Belvin also testified that Jerome Jenkins has knowledge of the discriminatory experience and retaliation Belvin experienced. See Belvin deposition at 181, 186, 274,275, and 304. Exhibit B. David Hewlett was constantly subjected to write ups and retaliated against with write ups for talking to Belvin. See Belvin’s deposition transcript at pages, 130, 133, 156, 157, and 230. Jenkins and Hewlett are two witnesses fully ware of the experience of Plaintiffs and can provide insightful testimonies helpful to the court.

The Defendant was also aware of these two witnesses and chose to question Plaintiffs extensively about the witnesses at deposition but exercised the option not to depose them. There

is nothing prejudicial to the defendant about the testimonies that will come from these witnesses. The court should allow them to testify

## **POINT II**

### **BILL GAMBRELL'S RACIST STATEMENTS CAN BE IMPUTED ON ELECTCHESTER BECAUSE ELECTCHESTER IS THE SUCCESSOR IN INTEREST TO THE FIVE SEPARATE HOUSING CORPORATIONS THAT WERE UNIFIED AS ONE ENTITY INTO ELECTCHESTER MANAGEMENT CORPORATION IN 2007 AND THE ALLEGATIONS ARE NOT TIME BARRED BECAUSE THIS IS A HOSTILE WORK ENVIRONMENT CASE.**

Bill Gambrell's racist statements can be imputed against Defendant Electchester because Electchester is the corporation that inherited all of the previous five housing coops that existed prior to the incorporation of defendant. See defendant Rule 56.1 statement paragraphs 1 thru 11. Doc. 44.2. It is the successor in interest to the original company. The plaintiffs and other employees maintained their job seniorities, pension vesting, and union rights. The staff were all absorbed wholesome. The defendant argument is unpersuasive and same management personnel including Vito Mundo, vice president and general counsel, continued their jobs.

According to Rule 403 of the Federal Rules of Evidence, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed Rules Evid rule 403. There is no basis to exclude Gambrell's statement here because management was aware, and complaints were made. Defendant cannot avoid liability by simply invoking the establishment of a new corporation on paper.

According to Nat'l R.R. Passenger Corp. v. Morgan, "[a] hostile work environment claim is composed of a series of separate acts that collectively constitute one 'unlawful employment practice.' 42 U.S.C. § 2000e-5(e)(1). The timely filing provision only requires that a Title VII plaintiff file a charge within a certain number of days after the unlawful practice happened. It does not matter, for purposes of the statute, that some of the component acts of the hostile work

environment fall outside the statutory time period.” Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 117 (2002)

The Plaintiff’s statements regarding Gambrell would not mislead the jury because Gambrell was employed by the predecessor company to ELM. Due to ELM being established to centralize management across the five Housing Companies, ELM assumed liability for actions performed by workers of the other Housing Companies. Since ELM assumed liability, Gambrell’s conduct is imputed to ELM.

The Plaintiff’s statements regarding Gambrell cannot be time barred because while the racist statements did fall outside of the statutory time period, it was one of many acts that constituted Plaintiff’s hostile work environment claim and it is undisputed that other acts fall within the statutory period. The court should therefore allow the racist statement made by Gambrell to be brought to the attention of the jury in this case.

### **POINT III**

#### **THE COURT DOES NOT NEED TO EXCLUDE THE REPTILE THEORY**

Excluding the reptile theory argument is baseless because it is not prejudicial to inform the Jury that employment discrimination laws are designed to protect them and the public.

The legislative history of NY EXEC § 296, for example, like Title VII, implies that employment discrimination laws were implemented in order to protect workers from bigotry and unfairness that may occur in the workplace because a number of amendments over time have included more people from marginalized groups such as victims of domestic violence. N.Y. Exec. Law § 296 (McKinney). It is not prejudicial to convey to the jury that the laws that the Defendant was breaking are designed to protect the working population including jurors who may or may not be workers. The argument is not derived from improper motive that appeals to the emotions of jury members rather such arguments ask jurors to uphold the intent of the law.

The point of punitive damages, for example, is that they convey society’s beliefs as related to the claim(s) made by the Plaintiff. In this case they are discrimination and retaliation. By excluding

the ability for the Plaintiff to send “a message about society’s or the community’s beliefs, especially as related to discrimination and retaliation, through a jury verdict”, the Defendant seeks to eliminate Plaintiffs’ right to discuss punitive damages in court. This in turn hampers the Plaintiffs’ ability to obtain punitive damages which plaintiff can rightfully include in Plaintiff’s communication to the jury. The court should therefore deny Defendant’s motion to exclude the reptile theory

#### **POINT IV**

#### **PLAINTIFFS WILL NOT INTRODUCE EVIDENCE OF INSURANCE OR SETTLEMENT DISCUSSIONS IN JURY’S PRESENCE**

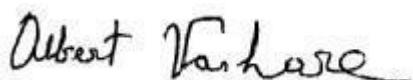
Plaintiffs will not present any evidence of insurance or settlement discussions to the jury.

#### **CONCLUSION**

For the foregoing reasons, the Court should deny Defendants’ motions in their entirety.

Dated: August 26, 2022

Respectfully submitted,



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#### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the WITHIN PLAINTIFF'S MEMORANDUM OF LAW on DEFENDANT VIA EMAIL on August 26, 2022, to:

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# CERTIFIED TRANSCRIPT

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1           UNITED STATES DISTRICT COURT  
2           EASTERN DISTRICT OF NEW YORK  
3           Docket No. 17-cv-06303 (NGG) (PK)

4           ----- x  
5           MICHAEL BELVIN and MICHAEL MAYERS,

6                         Plaintiffs,

7                         - against -

8                         ELECTCHESTER MANAGEMENT, LLC,

9                         Defendant.

10                         ----- x  
11                         March 7, 2019

12                         10:19 a.m.

13                         DEPOSITION of MICHAEL MAYERS, a Plaintiff herein,  
14                         taken by the Defendant, held at the offices of Wilson  
15                         Elser Moskowitz Edelman & Dicker, LLP, 150 East 42nd  
16                         Street, New York, New York, before Sara K. Killian, a  
17                         Professional Court Reporter and Notary Public of the State  
18                         of New York.

19  
20  
21  
22  
23  
24  
25

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1                   M. Mayers

2                   A.         We was told to strip floors by  
3                   yourselves, just the black individuals. Michael  
4                   Belvin, David Hewlitt and myself.

5                   Q.         Okay.

6                   A.         Can I get the paperwork that you got  
7                   because I had to rearrange how things was written  
8                   on my paperwork based on how things are here, so I  
9                   can answer them a lot -- if it's possible. It's  
10                  the same paperwork --

11                  Q.         You mean the --

12                  A.         I got it highlighted, yes. Same  
13                  page, 42.

14                  MS. MAYO: I'm going to go make  
15                  copies of this and we'll mark it into  
16                  evidence.

17                  (Time noted: 11:11 a.m.)

18                  (Recess taken.)

19                  (Time noted: 11:20 a.m.)

20                  MS. MAYO: Can we have this marked as  
21                  Exhibit G?

22                  (Whereupon, Exhibit G was marked for  
23                  identification.)

24                  MS. MAYO: Can I have the last  
25                  question and answer read back?

1 M. Mayers

2                  A.            Yes. It was necessary to strip  
3 floors.

4 Q. All right.

5 So when did this happen, paragraph  
6 42, the floor stripping that you just mentioned?

7           A.         It would be around 2013 when he  
8 transferred me.

9 Q. That's when you were transferred to  
10 Buildings 1 and 6?

11 A. First Housing - yes

12 | Q. From Building 9 in Second Housing?

13 A. Yes.

14 Q. Do you have any sense of when it was  
15 around 2013? Spring? Fall? Summer?

A. Around April

17 Q. Talk to me a little bit about what  
18 happened. Explain to me what happened.

19           A.        We was told -- I was told -- David  
20           Hewlitt and I was told to come clean the buildings  
21           every day by Ed Wiley, claiming that Tom Prezioso  
22           told him that David Hewlitt and I weren't cleaning  
23           our buildings

24 We happened to be the only black  
25 males over there and we were also transformed and

1                           M. Mayers

2                           Q.         Okay.

3                           What building was Mr. Hewlitt  
4 assigned to?

5                           A.         Three and five.

6                           Q.         When did Mr. Prezioso tell you to  
7 clean your building?

8                           A.         Every day. Every day. He didn't  
9 tell me directly. He sent Ed Wiley to tell me.

10                          Q.         What did Mr. Wiley said to you?

11                          A.         Every morning, when we met in the  
12 locker room, we would sit at the table and he was  
13 like "Tom is pointing out you two guys about not  
14 cleaning your buildings. You have to clean your  
15 buildings."

16                          I asked "What does he mean by clean  
17 buildings? Rectify what's wrong and I'll  
18 straighten it out."

19                          I never received an answer.

20                          Q.         Mr. Wiley said Tom is pointing out  
21 you guys?

22                          A.         Yes.

23                          Q.         Who else was present when he said  
24 this?

25                          A.         Me, David Hewlitt, George Restrepo,

1                   M. Mayers

2                   Q.        Okay.

3                   Did you have -- do you know if  
4                   Mr. Hewlitt had a similar experience with respect  
5                   to Ed walking him into the building?

6                   A.        No.     But Ed had Richie Bonnette walk  
7                   through Dave's building to see what was wrong with  
8                   the building and Richie asked me to walk with him.  
9                   We both walked up to Dave's building, Building 5.

10                  Q.        So the answer is no, you don't know  
11                  whether Mr. Prezioso did the same thing to David  
12                  Hewlitt in terms of sitting outside and having Ed  
13                  walk through the building?

14                  A.        I don't know that.

15                  Q.        You don't know that? You don't know  
16                  whether that happened or didn't happen?

17                  A.        I don't know.

18                  Q.        What you do know, though, is that at  
19                  some point you walked through the building with Ed  
20                  and -- through Dave's building with Ed and Richie?

21                  A.        With Richie Bonnette alone.

22                  Q.        You walked through Dave's building  
23                  with Richie Bonnette alone?

24                  A.        Yes.

25                  Q.        When was that?

1                   M. Mayers

2       the vacation time of Building 2. Building 2,  
3       which means I had to take care of Buildings 1 and  
4       6 and 2 --

5       Q.       When the person on Building 2 was on  
6       vacation?

7       A.       Yes.

8       Q.       Okay.

9       A.       Now, the person on Building 2 takes  
10      care of Building 7 on his vacation.

11      Q.       Okay.

12      A.       Upon that individual getting back  
13      from vacation, they called me and David Hewlitt to  
14      do Building 7 and that's not our assigned vacation  
15      buildings.

16      Q.       Who is the person from Building 7?

17      A.       Building 7 was George Restrepo. He  
18      went on vacation after Rodrigo got back.

19      Q.       Okay.

20                  Who covered your building when you  
21      went on vacation -- or your buildings, Buildings 1  
22      and 6 -- when you were on the vacation?

23      A.       Buildings 1 and 6 would be -- I  
24      believe it was George Restrepo would take care of  
25      Buildings 1 and 6. Yes. Seven took care of

1                           M. Mayers

2                           When did that happen?

3                           A.           That happened -- I'm only going to  
4 give you the year. That happened in 2014. No,  
5 I'm sorry. I'm sorry. That was like 2013.

6                           Q.           Were you given any reason why you  
7 were covering two buildings at that time? This  
8 wasn't at the same time, was it? They were not on  
9 vacation at the same time?

10                          A.           No. When Rodrigo got back from  
11 vacation, he was supposed to handle Building 7.  
12 They got on the radio and told me and David  
13 Hewlitt -- Joe Copeaaso got on the radio and told  
14 me and David Hewlitt to cover Building 7.

15                          Q.           For how many days did that happen?

16                          A.           That was for, like, a month because  
17 George had a month vacation. That was, like, a  
18 month.

19                          Q.           Why was Mr. Restrepo out?

20                          A.           Vacation.

21                          Q.           And you were just told to cover this?  
22 You weren't given any reason?

23                          A.           No explanation.

24                          Q.           Do you know if anybody else had ever  
25 been asked to cover two buildings or two -- not at

1                           M. Mayers

2       the same time, but in this manner?

3                           A.     Well, we used to actually get paid  
4     for covering another building over in Second  
5     Housing. When I got here, right, they -- the  
6     people who covered other buildings was assigned to  
7     those buildings when that person went on vacation.

8                           When I covered Building 2, that was  
9     understandable, but when Building 2 got back, I  
10    was not supposed to -- Building 2 was supposed to  
11    cover Building 7, but they made two of the black  
12    individuals cover it -- David Hewlitt and  
13    myself -- cover Building 7.

14                          Q.     Okay.

15                          I think, though, my question was had  
16    this ever -- to your knowledge, has this ever  
17    happened before?

18                          A.     It's never happened to no one ever.

19                          Q.     Okay.

20                          Do you know if any of the other black  
21    porters in the other housing units ever had to do  
22    the same thing, cover two buildings in one year,  
23    two vacation buildings?

24                          A.     You know, I really don't know because  
25    I'm not familiar with other housings because --

1                           M. Mayers

2                           Q.         When were you told that you had to  
3                           strip the floors using the method that you talked  
4                           about? When were you told that you had to do that  
5                           alone?

6                           A.         2013 in a meeting.

7                           Q.         Meeting with who?

8                           A.         Anthony Caiozzo, Tom Prezioso, Joe  
9                           Copeaaso, Miner Lee, Richie Bonnette, Carl Lizon,  
10                          Claude, Rodrigo, George Restrepo, David Hewlitt  
11                          was up in the building making an attempt to strip  
12                          the floors by himself at that time, making an  
13                          attempt.

14                          At that same time while we was  
15                          downstairs in this meeting, David Hewlitt was  
16                          trying to strip the floors by himself.

17                          Q.         You were told in this meeting what?

18                          A.         That we -- that virtually, these  
19                          floors is terrible, we need to strip the floors.  
20                          We was told to strip the floors by ourselves.

21                          Q.         So in this meeting with Anthony, Joe,  
22                          Tom, Miner Lee, Richie, Carl, Claude, Rodrigo and  
23                          George Restrepo, you guys were told to strip the  
24                          floors alone?

25                          A.         Yes.

1                           M. Mayers

2                           A. Yes. So it became isolated to me  
3 because I'm the only one that spoke up and said  
4 anything.

5                           Q. Okay.

6                           When was this meeting?

7                           A. 2013. I believe it was 2013, 2014.  
8 I'm not sure. It was one of those.

9                           Q. After this, did you talk to the  
10 Hispanic guys about why they were stripping in a  
11 crew?

12                          A. I don't have any authority to tell  
13 anybody what to do. No I didn't.

14                          Q. Did you ask them why they were  
15 stripping in a crew?

16                          A. No.

17                          Q. Did they tell you that they were  
18 given the okay to strip in a crew?

19                          A. No. I never asked.

20                          Q. While you were working at Buildings 1  
21 and 6, did you ask anybody to help you strip after  
22 this meeting?

23                          A. No. I wouldn't do that.

24                          Q. Do you know if David Hewlitt asked  
25 anybody to help him strip after this meeting?

1                           M. Mayers

2 us, they fire us.

3 Q.               Okay.

4 A.               They've been trying to get rid of us  
5 since this management stepped in in Electchester.  
6 They've been trying to get rid of us.

7 Q.               When you say "us," who you do you  
8 mean?

9 A.               The blacks.

10 Q.               All the blacks?

11 A.               If they could get away with it, yes.

12 Q.               Who else have they tried to fire?

13 What other black porter have they tried to fire?

14 A.               What other black porter have they  
15 tried to fire? They won't outright fire you.  
16 They write you up. They set up a pattern and have  
17 a paper trail based on getting rid of you.

18 Now, most of the black porters either  
19 get written up or get terminated.

20 Q.               Okay.

21 Who's been written up?

22 A.               Michael Belvin, Jerome Jenkins,  
23 myself.

24 Q.               Anybody else?

25 A.               Bobby.

1                           M. Mayers

2                           Q.     Would you necessarily witness all the  
3                           write ups?

4                           A.     No, not really. No. Not unless I'm  
5                           told about them. No, I wouldn't witness them all.

6                           Q.     How do you know that Mr. Jenkins was  
7                           written up?

8                           A.     Because he's terminated and he's a  
9                           friend of mine. I associate with him.

10                          Q.     Okay.

11                          What was Mr. Jenkin's terminated for?

12                          A.     I believe it was -- I believe it was  
13                          not following a directive. I'm not sure, but I  
14                          believe it was not following a directive. Yeah.

15                          Q.     Do you know what directive he was  
16                          given that he didn't follow?

17                          A.     No, I don't.

18                          Q.     And Bobby, how do you know that he  
19                          was written up?

20                          A.     How do I know he was written up?  
21                          Because he has more write ups than anybody in the  
22                          whole five housings. He even beats out  
23                          Mr. Belvin.

24                          Q.     It's your position that all of the  
25                          write ups that he received are unjustified?

1                           M. Mayers

2 up?

3                           A.         No.

4                           Q.         You haven't witnessed Mr. Jenkins  
5 being written up or Bobby being written up?

6                           A.         No.

7                           Q.         Or Anthony Edwards being written up?

8                           A.         No.

9                           Q.         Okay.

10                          What was Mr. Edwards written up for?

11                          A.         I am not sure, but I just know he got  
12 written up.

13                          Q.         Okay.

14                          To your knowledge, have any white  
15 porters ever been written up?

16                          A.         I'm sure, yeah. I'm sure Tommy  
17 Crane -- I believe he's gotten written up. I  
18 believe he's gotten written up. There's another  
19 white porter that got written up. Chris. He was  
20 suspended.

21                          Q.         How do you know this?

22                          A.         Because Ed Wiley told me. He said  
23 "Yeah, I had to suspend the kid because he was  
24 sleeping."

25                          Q.         Okay.

1                           M. Mayers

2                           You said that when you file a  
3 grievance, your workload gets harder and the  
4 example that you gave me was stripping floors.

5                           A.         Yes. Once I filed a grievance, all  
6 the sudden, the blacks -- the blacks -- because  
7 David Hewlitt filed, Michael Belvin filed and I  
8 myself filed.

9                           All the sudden, they're telling those  
10 three individuals who have been here for decades  
11 plus that never ever stripped floors by  
12 themselves, to strip floors by themselves.

13                          Q.         Was this in a separate meeting other  
14 than the meeting you identified earlier?

15                          A.         No, same situation. They approach  
16 each and every individual separately. Anthony  
17 Caiozzo approached Michael Belvin separately to  
18 tell him to strip floors by himself. These  
19 weren't all meetings. My situation was in a  
20 meeting.

21                          Q.         Okay.

22                          In that same meeting, everybody was  
23 told the same thing?

24                          A.         In my meeting, the meeting I was in,  
25 yes.

1                           M. Mayers

2       stuff. It's a big thing and it's a lot of work.

3                           It seemed like, to me, that we got  
4       less help, we got a lot less help. We had a  
5       really rough time after I filed this grievance.  
6       We had a really rough time because they didn't  
7       supply us with enough help to do this. Now, they  
8       do. Now, they give us help from other housings.

9                           By then, they were just allowing  
10      First Housing to do it. I mean, the other guys  
11      didn't say nothing. We all felt the same way, but  
12      no one else said nothing about we need help.

13      Q.               So this is when you were in First  
14      Housing?

15      A.               Yes, First Housing.

16      Q.               Okay.

17                       Who had to put up this Christmas  
18      stuff?

19      A.               Miner, Rodrigo, myself, George  
20      Restrepo and I'm not sure if David Hewlitt was  
21      there. If it's between 2012 or 2013 -- I'm not  
22      sure which one -- I'm not sure if it was David  
23      Hewlitt or Alvaro. Alvaro and Dave would switch  
24      with each other. I'm not sure which one it was  
25      exactly, whether it was Alvaro or David Hewlitt.

1                           M. Mayers

2 anything --

3                           A. I see Kelvin all the time. I talk to  
4 Bob's cousin all the time. I talk to him all the  
5 time. Tony is doing okay for himself. I'm in  
6 touch with them all the time. Yes. They've never  
7 received a call back. No. Never.

8                           Q. Did any of them tell you they had  
9 spoken to anybody at Electchester Management, LLC?

10                          A. Not at all.

11                          Q. Okay.

12                          You also said that black people are  
13 fired.

14                          Can you identify to me who has been  
15 fired?

16                          A. William Washington. You have the  
17 list of names over there. His cousin, Washington.  
18 His brother Anthony Washington. Jerome Jenkins.  
19 This guy named Ricky and this other light skinned  
20 guy named Keith. All black.

21                          Q. Where did Keith work?

22                          A. He worked in Third Housing.

23                          Q. When was he left go?

24                          A. I don't know. I just know he was  
25 fired.

1 M. Mayers

2 we were ever friends. We just was associates. We  
3 dealt with each other. That's it. I don't think  
4 we were ever friends.

5 Q. Why would Mr. Bonnette say something  
6 like that to Mr. Belvin when they were not  
7 friends?

8           A.         Because at the time, we did speak.  
9         We all spoke at the time. These are one of the  
10        reasons why we no longer speak. Just one of them.

Q. Mr. Jenkins, why was he left go?

12 A. Jerome Jenkins? I believe it's  
13 because he didn't follow a directive.

Q. Where did he work?

A. He worked in Fourth Housing.

16 Q. Okay.

17 You don't know what directive that  
18 was?

19 A No, I don't. I wasn't there.

20 Q. Did Mr. Jenkins say to you that he  
21 thought his termination was discriminatory?

22 Yes. He went to arbitration. Yes.

23 Q. What was the basis for his belief  
24 that his termination was discriminatory?

25 His skin color

1                           M. Mayers

2         fired.

3                           Q.         And William Washington, the same  
4         thing? Do you know when he got fired?

5                           A.         No, I don't.

6                           Q.         Was it before you filed your EEOC  
7         charge?

8                           A.         Yes. Yes, he was gone before the  
9         EEOC charge.

10                          Q.         And Anthony Washington, do you  
11         remember when he got fired?

12                          A.         Yes, he was -- I don't remember when,  
13         but he was gone before I filed my EEOC charge. I  
14         don't remember when.

15                          Q.         So in the last four years, can you  
16         identify a black person who's been terminated by  
17         Electchester Management, LLC?

18                          A.         Jerome Jenkins.

19                          Q.         Anybody else?

20                          I'm sorry. I thought you said  
21         Mr. Jenkins was let go six years ago.

22                          A.         No, I did not tell you -- that was  
23         Anthony Washington. About six or seven years ago.  
24         That was Anthony Washington. That's not Jerome  
25         Jenkins.

1 M. Mayers

2 So he said "Fine. This is how this  
3 works. No one calls Mike, but you get no  
4 overtime" and this is what he told me.

5 Q. Okay.

8           A.        Basically, yeah. Everything they  
9 done was based on race. So yeah.

10 Q. What's the basis of your belief that  
11 that had anything to do with your race?

12           A.         Because of the fact that I'm the only  
13         black individual over there at the time before  
14         David Hewlitt got there.  For me to be the only  
15         one who don't receive overtime kind of speaks for  
16         itself.

17 Q. Do you know if any of the other  
18 porters had an argument with Ed Wiley?

19 A. No. They don't argue. It's only  
20 black people that argue.

21 Q. So you can't identify any non-black  
22 porter who engaged in similar activities with Ed  
23 Wiley?

24 A. No. Not that I know of. I can't say  
25 it didn't happen. Him and Richie didn't get along

1                           M. Mayers

2                           Q.         Okay.

3                           So anybody other than Jerome Jenkins?

4                           A.         That I remember? That I remember?

5                           No. It was one guy who I don't know his name. He  
6                           worked in Building 10 and 12. I believe Ed Wiley  
7                           fired him. I believe Ed Wiley fired him. He  
8                           worked in Building 10 and 12. I don't know his  
9                           name. I don't know anything about why he got  
10                          fired or anything. I just know he worked here for  
11                          like two weeks and he was gone.

12                          Q.         In the same four-year period of time,  
13                          has nobody else -- has anybody else been fired  
14                          from Electchester Management, LLC?

15                          A.         No.

16                          Q.         Just Jerome Jenkins and this guy  
17                          from --

18                          A.         We're talking about black  
19                          individuals, correct?

20                          Q.         Anybody.

21                          A.         I believe there's a guy named Jose  
22                          got fired and -- I don't know. There's some Third  
23                          Housing guys who got fired. I don't know their  
24                          names.

25                          Q.         How many guys from Third Housing?

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1

2 CERTIFICATION

3

I, SARA K. KILLIAN, a Court  
Reporter and Notary Public of the State  
of New York, do hereby certify that  
MICHAEL MAYERS, the witness whose  
examination under oath is hereinbefore set  
forth, was duly sworn, and that such deposition  
is a true record of the testimony given  
by such witness.

11

12

13

14

15

I FURTHER CERTIFY that I am not  
related to any of the parties to this  
action by blood or marriage, and that  
I am in no way interested in the  
outcome of this matter.

16

17

IN WITNESS WHEREOF, I have hereunto  
set my hand this 11th day of March, 2019.

18

19



20

21

SARA K. KILLIAN

22

Notary Public of the State of New York

23

24

25

# CERTIFIED TRANSCRIPT

Page 1

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK  
4 Docket No. 17-cv-06303 (NGG) (PK)

5 - - - - - x  
6 MICHAEL BELVIN and MICHAEL MAYERS,

7 Plaintiffs,

8 - against -  
9

10 ELECTCHESTER MANAGEMENT, LLC,  
11

12 Defendant.  
13

14 - - - - - x  
15 March 6, 2019  
16 10:37 a.m.

17 DEPOSITION of MICHAEL BELVIN, a Plaintiff herein,  
18 taken by the Defendant, held at the offices of Wilson  
19 Elser Moskowitz Edelman & Dicker, LLP, 150 East 42nd  
20 Street, New York, New York, before Sara K. Killian, a  
21 Professional Court Reporter and Notary Public of the State  
22 of New York.

23  
24  
25

1 M. Belvin

**A.**      **No.**      **Date**      **Time**      **Location**

3 Q. Did any of them ever say to you that  
4 Mr. Caiozzo referred to them in any sort of  
5 derogatory manner as a result of them being black?

6 A. Not that I recall.

7 Q. Paragraph 22 --

8 A. Yes?

9 Q. Can you identify who these other  
10 African American employees are who were constantly  
11 issued write ups?

12 A. Mr. Mayers.

13 Q. Anyone else?

14 A. Myself.

15 Q. Yes, other than you.

16 A. I believe David Hewlitt, Bobby -- I  
17 don't know Bobby's last name. Anthony Edwards.

18 Q. Anyone else?

19 A. I believe Milton. I can't remember  
20 Milton's last name.

21 Q. Anyone else?

A. That's about it.

23 Q. Okay.

24 So what write up were you issued that  
25 other people were not issued for doing the same

1 M. Belvin

2 Q. Were there other people present?

3 A. No, just them two and me.

4 Q. Did they know you were there?

5 A. I don't think they did.

6 Q. So you were not actually part of this  
7 discussion?

8 A. No.

9 Q. You were eavesdropping?

10           A.         No. I was coming out of the office  
11          and I stopped to -- it was cold out, so I stopped  
12          to put my -- button up my jacket and I could hear  
13          the conversation.

I will say I didn't make any noise.

15 Q. How long did you stand there?

16           A.       Took me probably about a minute or  
17       two to tie up my clothes or whatever and then I  
18       had to walk around the corner and it's in the  
19       basement and you could hear the echoes of  
20       everything as I'm walking away.

21 Q. Richie Bonnette, Dave Hewlitt --  
22 Richie is, again, black, right?

23 A. Yes.

24 O. And Dave?

25 A. Black.

1 M. Belvin

2 he got written up.

3 Q. In the times you went across the  
4 street, you did not get written up for going  
5 across the street to get snacks?

6 A. I stopped.

7 Q. When?

8           A.        Tom became general manager, I think,  
9        in 2009, I believe. After the looks and some of  
10      the things that he would say at times or whatever,  
11      I didn't think he was a person that would give you  
12      anything, so I just stopped doing it. I try to  
13      read people, how I see them act or whatever and I  
14      don't think I'm going to put myself in that  
15      predicament so he could write me up, so I never do  
16      it.

17 Q. He never said anything to you?

A. He never said anything to me, no.

19 Q. So when did this happen with  
20 Mr. Hewlitt?

21 A. He was working in Fourth Housing at  
22 the time and I think it had to have been 2009.

23 Q. Since 2009, have you seen -- to your  
24 knowledge, have any other black employees been  
25 written up for going across the street?

1 M. Belvin

2 A. Anthony Edwards and Bobby and we had  
3 Jerome Jenkins.

4 Q. So other than -- what is the basis  
5 for your belief that you were transferred to  
6 Fourth Housing in retaliation for having filed the  
7 EEOC complaint and for having complained to Richie  
8 in 2013?

9           A.         The workload is different, much more.  
10          I mean, it's an insurmountable amount of work as  
11          opposed to what I had in Second Housing.

12                           The roaches, I pretty much -- the  
13 people in the building will tell you now that if  
14 they take -- as a matter of fact, they had spoken  
15 to Anthony -- "If you move him out of this  
16 building, we're going to file a complaint up the  
17 hill against you because the building is clean now  
18 and we don't have the amount of roaches that we  
19 had before. He's wonderful here."

I don't even really want to leave the building because I got to know the people in the building like I did in Building 11 and I got a good rapport with most of them and I'm fine. I just don't like the idea that I have so much work on a Saturday and Sunday and they're not even

1 M. Belvin

2 A. Yes, there is.

3 Q. There is?

4 A. Yes.

5 Q. Or there are.

A. Yes, there is other black porters.

7 Q. Who are they?

8           A.        Mr. Mayers works in First Housing,  
9       the only black porter.

10 Q. He works in First Housing, you said?

11 A. Yes. I'll do them in numbers.

13 | Dave. That's it.

14 Q. Thir

### 15 A. Third

16 Fourth Housing is Anthony Edwards.

18 not there. I can't count him. Just two.

19 Q. Okay.

20 And Fifth?

21 A. No black porters.

Q. How many houses in Fifth Housing?

## 23 How many buildings in Fifth Housing?

24 A. Two huge ones.

Q. So are there only two porters in

Page 230

1 M. Belvin

2 up the hill.

3 Q. Did he only say this to the black  
4 porters?

5 A. Mr. Mayers told me he said it to him.  
6 He said it to David Hewlitt.

7 Q. Did he say this to any of the  
8 Hispanic or white porters?

9 A. I wouldn't know.

10 Q. Did you go to your Union with a  
11 complaint about Ed Wiley?

12 A. I believe I filed -- I filed so many  
13 grievances. I could have.

14 Q. I want to talk to you about this hand  
15 truck issue.

16 A. Oh, Jesus.

17 Q. Do you have any photographs of this  
18 hand truck?

19 A. I do, but I don't have them with me.

20 Q. Do you have photographs of other  
21 people using a hand truck similar to yours?

22 A. I do, but I don't have it with me.

23 MR. VAN-LARE: I don't have them. If  
24 you have it, make them available to me.

25 THE WITNESS: Okay. I will. I know

1                           M. Belvin

2   abrasive with me.

3                           Everything I did, if I walked -- like  
4   the hat incident. I got a wool hat on my  
5   head that has -- it's not a cap, a baseball cap  
6   where you put it on and it has to be one way, but  
7   this is a wool hat that you put on your head and  
8   you don't look, oh, let me make sure the name is  
9   here or whatever when I put it on. It's freezing  
10   outside.

11                          And they complained about little  
12   things like that. They complained about me being  
13   late for the meeting. They complained about  
14   everything with me. I mean, I had no write ups  
15   until I went to the EEOC and then every time you  
16   talk to Vito Mundo "Now, Mike, you got a stack of  
17   write ups in there. We could make them go away if  
18   you drop your EEOC case."

19                          Q.         Vito said that to you?

20                          A.         Yes.

21                          Q.         When did he say that to you?

22                          A.         In 2015, early -- I filed in March.  
23   They started with the harassment and they -- I  
24   think this had to have been sometime in late --  
25   the middle part of the 2015.

1 M. Belvin

2 Mr. Bonnette regarding Electchester Management's  
3 hiring practices?

4           A.         Like I said, it was so many times  
5         that I just -- a lot of them, I don't remember  
6         because some of them was like a minute or two,  
7         "Have they hired any blacks over in Fourth  
8         Housing?    Have they hired any blacks in Fourth  
9         Housing?    Did they hire in Fifth Housing?" and he  
10       would say "No.   I'm working on it, I'm working on  
11       it.   I'm working on it."

12 So a lot of those conversations was  
13 like that.

14 Q. Okay.

15 So the next time you talked to him  
16 about this, what happened to you that you believe  
17 was retaliatory?

18 A. It wasn't to me. It was one of my  
19 co-workers which was black. He was involved in a  
20 conversation.

21 Q. Who was this and what happened to  
22 them?

23 A. Jerome Jenkins.

Q. What happened to Mr. Jenkins?

A. Repeatedly written up and fired.

1 M. Belvin

2 employees of Defendant all have knowledge or  
3 information relevant to the subject matter of this  
4 action."

5 Right?

6 A. Mm - hmm .

7 Q. I need you to be more specific than  
8 that and identify who these other employees of  
9 Defendant who have knowledge are.

A. Have knowledge of what took place?

11 Ed Wiley.

Q. You already identify Ed Wiley here.

13 It says other employees. You identify Joe  
14 Copeaaso, Ed Wiley, Anthony Caiozzo, Richie  
15 Bonnette, Tom Prezioso, Vito Mundo. Then you say  
16 and other employees of Defendant.

17 Who are those other employees other  
18 than the people you identify in this paragraph?

19 A. I would say Jerome Jenkins.

20 Q. Anyone else?

21 A. Anthony Washington.

22 Q. Anyone else?

23 A. Mike Mayers.

24 Q. Anyone else?

25 A. That's about it that I could think

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1

2 CERTIFICATION

3

I, SARA K. KILLIAN, a Court  
Reporter and Notary Public of the State  
of New York, do hereby certify that  
MICHAEL BELVIN, the witness whose  
examination under oath is hereinbefore set  
forth, was duly sworn, and that such deposition  
is a true record of the testimony given  
by such witness.

11

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15

I FURTHER CERTIFY that I am not  
related to any of the parties to this  
action by blood or marriage, and that  
I am in no way interested in the  
outcome of this matter.

16

17

IN WITNESS WHEREOF, I have hereunto  
set my hand this 11th day of March, 2019.

18

19



20

21

SARA K. KILLIAN

22

Notary Public of the State of New York

23

24

25